



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

XRIN 0648-XA976

Taking of Threatened or Endangered Marine Mammals Incidental to Commercial Fishing Operations; Listing of Fisheries

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Marine Mammal Protection Act (MMPA) requires NMFS to publish in the Federal Register a list of fisheries that have been authorized to take threatened or endangered marine mammals. A list of such fisheries was published December 29, 2010, which authorized the taking of certain marine mammals listed as threatened or endangered under the Endangered Species Act (ESA) incidental to commercial fishing. With issuance of this notice, NMFS adds West Coast groundfish fisheries to this list for one stock of marine mammals—the Eastern U.S. stock of Steller sea lions.

ADDRESSES: Reference material for this determination is available on the Internet at the following address: <http://www.alaskafisheries.noaa.gov/index/analyses/analyses.asp>.

The Recovery plan for Steller sea lions is available on the Internet at the following address: <http://www.nmfs.noaa.gov/pr/pdfs/recovery/stellersealion.pdf>.

Copies of the reference materials may also be obtained from the Protected Resources Division, NMFS, Northwest Region, Protected Resources Division, 7600 Sand Point Way NE. Attention—Donna Darm, Assistant Regional Administrator.

FOR FURTHER INFORMATION CONTACT: Lynne Barre, NMFS Northwest Region, (206) 526-4745; Kristy Long, NMFS Office of Protected Resources, (301) 427-8440.

#### SUPPLEMENTARY INFORMATION:

##### Background

Under the MMPA, section 101(a)(5)(E) NMFS shall allow the taking of marine mammals from species or stocks listed as threatened or endangered under the ESA (16 U.S.C. 1531 et seq.) incidental to commercial fishing operations if NMFS determines that: (1) incidental mortality and serious injury will have a negligible impact on the affected species or stock; (2) a recovery plan has been developed or is being developed for such species or stock under the ESA; and (3) where required under section 118 of the MMPA, a monitoring program has been established, vessels engaged in such fisheries are registered in accordance with section 118 of the MMPA, and a take reduction plan has been developed or is being developed for such species or stock.

On December 29, 2010, NMFS issued a 3-year permit to participants in Alaska groundfish fisheries under MMPA section 101(a)(5)(E) for the incidental taking of marine mammal stocks listed under the ESA, including the threatened Eastern U.S. stock of Steller sea lions (75 FR 81972). Along with issuing the permit, NMFS made a final Negligible Impact Determination (NID), identified the recovery plan and described monitoring plans satisfying the three criteria listed above. The notice included a list of fisheries that have been authorized to take threatened or endangered species. The NID

included an analysis of impacts from West Coast groundfish fisheries on the Eastern U.S. stock of Steller sea lions and with this notice, NMFS is adding West Coast groundfish fisheries (including CA set gill net, CA/OR/WA salmon troll, WA/OR/CA groundfish, bottomfish longline/set line, WA/OR North Pacific halibut longline/set line, CA halibut bottom trawl, WA/OR/CA shrimp trawl, WA/OR/CA groundfish trawl, CA coonstripe shrimp, rock crab, tanner crab pot or trap, and WA groundfish, bottomfish jig) to the previous list of fisheries published on December 29, 2010, for the Eastern U.S. stock of Steller sea lions.

#### Negligible Impact Determination

Prior to issuing a permit to take ESA-listed marine mammals incidental to commercial fishing, NMFS must determine if the mortality and serious injury incidental to commercial fisheries will have a negligible impact on the affected species or stocks of marine mammals. The final NID (December 29, 2010; 75 FR 81972) for the Eastern U.S. stock of Steller sea lions is available at:

<http://www.alaskafisheries.noaa.gov/index/analyses/analyses.asp>.

The minimum estimated mortality and serious injury rate incidental to commercial fisheries (both U.S. and Canadian) is 25.6 Eastern U.S. stock Steller sea lions per year. This estimate considered interactions with all U.S. fisheries, including observer data from the WA/OR/CA groundfish trawl fishery. The estimated mortality and serious injury rate due to other human related sources is 15.1 animals per year. Based on the status information in the stock assessment report (Allen and Angliss 2010), the current level of Potential Biological Removal (PBR) for Eastern U.S. stock Steller sea lions is 2,378 animals. The total human related mortality (25.6 + 15.1) is 40.7 per year which is

less than 10 percent of this stock's PBR (237.8 animals). Therefore, NMFS determined that the annual mortality and serious injury incidental to commercial fisheries will have a negligible impact on the Eastern U.S. stock of Steller sea lions (December 29, 2010; 75 FR 81972).

#### Recovery Plans

A Recovery Plan for Steller sea lions has been completed and is available on the Internet at the following address:

<http://www.nmfs.noaa.gov/pr/pdfs/recovery/stellersealion.pdf>.

Accordingly, the requirement to have recovery plans in place or being developed is satisfied.

#### Monitoring Program

MMPA section 118(c)(5)(A) provides that registration of vessels in fisheries should, after appropriate consultations, be integrated and coordinated to the maximum extent feasible with existing fisher licenses, registrations, and related programs. West Coast groundfish fisheries are considered Category III with respect to Steller sea lions and therefore, no permit or registration is required, however, reports of incidental mortality or injury of marine mammals are required. The Marine Mammal Authorization Program which provides reporting requirements and forms has been integrated into the state fishery permit programs.

#### Take Reduction Plans

Subject to available funding, MMPA section 118 requires a Take Reduction Plan (TRP) in cases where a strategic stock interacts with a Category I or II fishery. The Eastern U.S. stock of Steller sea lions is designated as a strategic stock under the MMPA

because it is listed as threatened under the ESA. The short-term goal of a TRP is to reduce mortality and serious injury of marine mammals incidental to commercial fishing to levels below PBR and has been realized.

The long-term goal of a TRP is to reduce incidental mortality and serious injury to insignificant levels approaching a zero mortality and serious injury rate, taking into account the economics of the fishery, the availability of existing technology, and existing State or regional fishery management plans. Mortality and serious injury of Steller sea lions, Eastern U.S. stock are at an insignificant level, approaching a zero mortality and serious injury rate (Allen and Angliss, 2010). MMPA section 118(b)(2) states that fisheries maintaining such mortality and serious injury levels are not required to further reduce their mortality and serious injury rates. Because the goals of TRPs are to reduce mortality and serious injury of marine mammals incidental to commercial fishing operations, no TRP is required for this stock.

MMPA section 101(a)(5)(E) requires NMFS to publish in the Federal Register a list of fisheries that have been authorized to take threatened or endangered marine mammals. A list of such fisheries was published December 29, 2010 (75 FR 81972), which authorized the taking of certain threatened or endangered marine mammals incidental to commercial fishing. With issuance of this notice, NMFS adds 9 Category III fisheries (including CA set gill net, CA/OR/WA salmon troll, WA/OR/CA groundfish, bottomfish longline/set line, WA/OR North Pacific halibut longline/set line, CA halibut bottom trawl, WA/OR/CA shrimp trawl, WA/OR/CA groundfish trawl, CA coonstripe shrimp, rock crab, tanner crab pot or trap, and WA groundfish, bottomfish jig) to this list for the Eastern U.S. stock of Steller sea lions (Table 1).

Table 1. List of Fisheries Authorized to Take Threatened and Endangered Marine

Mammals Incidental to Fishing Operations.

<b>Fishery</b>	<b>Category</b>	<b>Marine Mammal Stock</b>
HI deep-set (tuna target) longline/set line	I	Humpback whale, CNP stock
HI shallow-set (swordfish target) longline/set line	II	Humpback whale, CNP stock
AK Bering Sea/Aleutian Islands flatfish trawl	II	Steller sea lion, Western stock
AK Bering Sea/Aleutian Island pollock trawl	II	Fin whale, NEP stock Steller sea lion, Western stock
AK Bering Sea sablefish pot	II	Humpback whale, WNP stock Humpback whale, CNP stock
AK Bering Sea/Aleutian Islands Pacific cod longline fisheries	II	Steller sea lion, Western stock
AK miscellaneous finfish set gillnet	III	Steller sea lion, Western stock
AK Gulf of Alaska sablefish longline	III	Sperm whale, NP Steller sea lion, Eastern stock
AK halibut longline/set line (State and Federal waters)	III	Steller sea lion, Western stock
AK Bering Sea/Aleutian Islands Atka mackerel trawl	III	Steller sea lion, Western stock
AK Bering Sea/Aleutian Islands Pacific cod trawl	III	Steller sea lion, Western stock
AK Gulf of Alaska Pacific cod trawl	III	Steller sea lion, Western stock
AK Gulf of Alaska pollock trawl	III	Fin whale, NEP stock Steller sea lion, Western stock
CA set gill net	III	None documented
CA/OR/WA salmon troll	III	None documented
WA/OR/CA groundfish, bottomfish longline/set line	III	None documented
WA/OR North Pacific halibut longline/set line	III	None documented
CA halibut bottom trawl	III	None documented
WA/OR/CA shrimp trawl	III	None documented

WA/OR/CA groundfish trawl	III	Steller sea lion, Eastern stock
CA coonstripe shrimp, rock crab, tanner crab pot or trap	III	None documented
WA groundfish, bottomfish jig	III	None documented

Dated: February 17, 2012.

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James H. Lecky,

Director, Office of Protected Resources,

National Marine Fisheries Service.

[FR Doc. 2012-4513 Filed 02/24/2012 at 8:45 am; Publication Date: 02/27/2012]